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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,858	12/04/2003	Timothy Graham Brockwell	FBD-1010USC	7915
43840	7590	03/27/2006		
WATERS INVESTMENTS LIMITED C/O WATERS CORPORATION 34 MAPLE STREET - LG MILFORD, MA 01757			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,858	<b>Applicant(s)</b> BROCKWELL, TIMOTHY GRAHAM	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9,15 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,10-14,16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 08/967,410.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-4-03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. It is to be noted that the restriction requirement mailed July 19, 2005 erroneously indicates claims 1 and 6 are generic. Wherein claim 1 sets forth the second seal as one or more O-ring, it is not a generic claim. Only claim 6 is generic to both species.
2. Claims 9, 15, and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 23, 2005.

### *Double Patenting*

3. Claims 1-4, 6-8, 10, 12-14, 16 and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-8 of copending Application No. 10/304,211, US Publication No. 2003/0108454. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a closure comprising a tubular body member, a first seal, a second seal, and a valve body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use slightly different language to set forth the same structure of the vial closure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-4, 6-8, 10, 11-14, 16, and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-8 of copending Application No. 10/304,212, US Publication No. 2003/0108455. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a closure comprising a tubular body member, a first seal, a second seal, and a valve

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body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use slightly different language to set forth the same structure of the vial closure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-4,6-8,10,1-14,16, and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-8 of US Publication No. 2002/0066712. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a closure comprising a tubular body member, a first seal, a second seal, and a valve body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use slightly different language to set forth the same structure of the vial closure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 6-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,715,624. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a closure comprising a tubular body member, a first seal, a second seal, and a valve body. Patent claims additionally set forth functional limitations of the closure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide additional functional language to the claims of the instant applicant to provide a more clear understanding of the scope of the invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brony (US 5,620,434) in view of Markelov (US 5,932,482).

Brony discloses a vial **v** and a closure device, said closure device comprising a tubular body **18** having an aperture **74** for establishing fluid communication between the interior of said vial and the interior of said tubular body, a first seal for establishing a substantially gas tight seal between the exterior of the tubular body and the vial as seen in figure 7 to be the surface of the tubular body contacting the vial, a valve seat on the outermost surface of the body which is larger in diameter than the aperture, a resiliently biased, movable valve **71** located within the tubular body, said valve body maintained in contact by means of a spring **76**, and a second seal permitting a gas sampling means to be inserted into the interior of the tubular body and establishing a substantially gas-tight seal with the exterior of an inserted gas sampling means as seen in figure 7 at the uppermost portion of the closure, said valve body preventing said gas sampling means from being inserted beyond the valve body into the vial. The closure device is capable of closing a gas sampling vial.

Brony does not teach a tapered first seal surface for engaging a tapered socket on an associated vial.

Markelov teaches it is known to provide a closure vial with a tapered first seal surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first seal surface a tapered shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. Doing so allow for the closure to be utilized in vials having a tapered socket.

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9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 6 above, and further in view of Phillips (US 4,080,965).

Brony as modified teaches the claimed vial closure except for at least one O-ring in a groove of the tubular body interior wall.

Phillips teaches it is known to utilize an O-ring seal (37) or a projecting rib (64) on the head of the housing to seal against the entering sampling device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an O ring for the head sealing mechanism of Brony. Doing so is an obvious substitution of equivalent structure known in the art for sealing against leaks. With regard to the groove on the interior wall of Brony, it would be obvious to one of ordinary skill in the art at the time the invention was made to provide a groove in the interior wall for holding the O-ring in a stationary position.

10. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brony in view of Phillips.

Brony teaches the claimed vial closure except for at least one O-ring in a groove of the tubular body interior wall.

Phillips teaches it is known to utilize an O-ring seal (37) or a projecting rib (64) on the head of the housing to seal against the entering sampling device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an O-ring for the head sealing mechanism of Brony. Doing so is an obvious substitution of equivalent structure known in the art for sealing against leaks. With regard to the groove on the interior wall of Brony, it would be obvious to one of ordinary skill in the art at the time the invention was made to provide a groove in the interior wall for holding the O-ring in a stationary position.

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11. Claims 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan et al (US 5,046,645) in view of Phillips.

Hagan teaches the claimed vial closure except for the O-ring seal.

Phillips teaches it is known to utilize an O-ring seal (37) or a projecting rib (64) on the head of the housing to seal against the entering sampling device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an O-ring for the head sealing mechanism of Hagan. Doing so is an obvious substitution of equivalent structure known in the art for sealing against leaks.

12. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 12 above, and further in view of Markelov.

Hagan as modified teaches the claimed vial closure except for a metal ring to secure the closure in the vial opening.

Markelov teaches it is known to provide a metal ring to secure a closure in a vial opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a screw threaded ring to the closure of Hagan. Doing so provides a security closure for maintaining the closure within an associated vial opening.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which

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require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382



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- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
March 15, 2006

A handwritten signature in black ink, appearing to read 'RH', with a long horizontal flourish extending to the right.

Robin A. Hylton  
Primary Examiner  
GAU 3727